

EXHIBIT 9

From: [Mark Lezama](#)
To: [Carson Olsheski](#)
Cc: bpalapura@potteranderson.com; dmoore@potteranderson.com; [Greenfield, Leon](#); [Vote, Dominic](#); [Ford, Mark](#); [Milici, Jennifer](#); [Apple Masimo Service](#); [Knobbe.MasimoDE](#); [Jack Phillips](#); [Megan C. Haney](#); [Elena K. Wentz](#)
Subject: RE: Apple v. Masimo (Delaware) - Discovery Responses and Privilege
Date: Monday, July 17, 2023 9:33:51 AM

Carson,

We notified you on Thursday we would be filing a discovery-conference request by close of business today and consequently asked you to provide on Thursday any times between then and midday today that Apple was available to confer. Instead, you are only now notifying us at 11 am Eastern today that you are available at 4 or 5. We will confer with you at 4, but we are sticking to our plan to file the teleconference request today. Either on the call or before then, please let us know four or five dates in late July or early August Apple is available for a conference with the Court. If you would like Masimo to take into account during our call the letter you are drafting, please provide it well in advance of the call.

We can use the following conference line at 4 Eastern:

Call-in: [REDACTED]

Conference room number: [REDACTED]

Mark Lezama

Partner

mark.lezama@knobbe.com

949-721-5362 Direct

Knobbe Martens

2040 Main St., 14th Fl.

Irvine, CA 92614

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From: Carson Olsheski <COlsheski@desmaraisllp.com>

Sent: Monday, July 17, 2023 8:01 AM

To: Mark Lezama <Mark.Lezama@knobbe.com>

Cc: bpalapura@potteranderson.com; dmoore@potteranderson.com; [Greenfield, Leon](#) <Leon.Greenfield@wilmerhale.com>; [Vote, Dominic](#) <Dominic.Vote@wilmerhale.com>; [Ford, Mark](#) <Mark.Ford@wilmerhale.com>; [Milici, Jennifer](#) <Jennifer.Milici@wilmerhale.com>; [Apple Masimo Service](#) <AppleMasimoService@desmaraisllp.com>; [Knobbe.MasimoDE](#) <Knobbe.MasimoDE@knobbe.com>; [Jack Phillips](#) <JCP@pmhdelaw.com>; [Megan C. Haney](#) <mch@pmhdelaw.com>; [Elena K. Wentz](#) <EKW@pmhdelaw.com>

Subject: RE: Apple v. Masimo (Delaware) - Discovery Responses and Privilege

Hi Mark,

We are available to confer today at 4pm or 5pm Eastern. We'll send out a written response to your July 11 letter at that time.

Carson Olsheski
Desmarais LLP
230 Park Avenue
New York, NY 10169
212-808-2911 | direct

From: Mark Lezama <Mark.Lezama@knobbe.com>
Sent: Thursday, July 13, 2023 5:26 PM
To: Carson Olsheski <COlsheski@desmaraisllp.com>
Cc: bpalapura@potteranderson.com; dmoore@potteranderson.com; Greenfield, Leon <Leon.Greenfield@wilmerhale.com>; Vote, Dominic <Dominic.Vote@wilmerhale.com>; Ford, Mark <Mark.Ford@wilmerhale.com>; Milici, Jennifer <Jennifer.Milici@wilmerhale.com>; Apple Masimo Service <AppleMasimoService@desmaraisllp.com>; Knobbe.MasimoDE <Knobbe.MasimoDE@knobbe.com>; Jack Phillips <JCP@pmhdelaw.com>; Megan C. Haney <mch@pmhdelaw.com>; Elena K. Wentz <EKW@pmhdelaw.com>
Subject: [Ext] RE: Apple v. Masimo (Delaware) - Discovery Responses and Privilege

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Carson,

Masimo raised these issues on June 30. We do not understand why it is taking so long for Apple to confer on these two simple issues: (1) whether Apple must commit now to maintaining or waiving privilege and (2) whether Apple will search for materials responsive to the full scope of certain requests. In view of the August 10 deadline for substantial completion of document production, Masimo will request a discovery-dispute teleconference on these issues by close of business Monday, July 17. We hope Apple will make itself available to confer in the interim and the parties can file jointly. But if Apple opts not to, we will move forward and file unilaterally.

If Apple is going to make itself available to confer between now and midday Monday, please propose some times later today.

Mark Lezama
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From: Carson Olsheski <COlsheski@desmaraisllp.com>
Sent: Wednesday, July 12, 2023 7:20 PM
To: Mark Lezama <Mark.Lezama@knobbe.com>
Cc: bpalapura@potteranderson.com; dmoore@potteranderson.com; Greenfield, Leon <Leon.Greenfield@wilmerhale.com>; Vote, Dominic <Dominic.Vote@wilmerhale.com>; Ford, Mark <Mark.Ford@wilmerhale.com>; Milici, Jennifer <Jennifer.Milici@wilmerhale.com>; Apple Masimo Service <AppleMasimoService@desmaraisllp.com>; Knobbe.MasimoDE <Knobbe.MasimoDE@knobbe.com>; Jack Phillips <JCP@pmhdelaw.com>; Megan C. Haney <mch@pmhdelaw.com>; Elena K. Wentz <EKW@pmhdelaw.com>
Subject: RE: Apple v. Masimo (Delaware) - Discovery Responses and Privilege

Hi Mark,

Unfortunately that time no longer works for Apple, and we need to review the issues raised in your letter yesterday and raise them with our client. We will respond as soon as practical and anticipate being available to meet and confer early next week.

Best,

Carson Olsheski
Desmarais LLP
230 Park Avenue
New York, NY 10169
212-808-2911 | direct

From: Mark Lezama <Mark.Lezama@knobbe.com>
Sent: Wednesday, July 12, 2023 7:23 PM
To: Carson Olsheski <COlsheski@desmaraisllp.com>
Cc: bpalapura@potteranderson.com; dmoore@potteranderson.com; Greenfield, Leon <Leon.Greenfield@wilmerhale.com>; Vote, Dominic <Dominic.Vote@wilmerhale.com>; Ford, Mark <Mark.Ford@wilmerhale.com>; Milici, Jennifer <Jennifer.Milici@wilmerhale.com>; Apple Masimo Service <AppleMasimoService@desmaraisllp.com>; Knobbe.MasimoDE <Knobbe.MasimoDE@knobbe.com>; Jack Phillips <JCP@pmhdelaw.com>; Megan C. Haney <mch@pmhdelaw.com>; Elena K. Wentz <EKW@pmhdelaw.com>
Subject: [Ext] RE: Apple v. Masimo (Delaware) - Discovery Responses and Privilege

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Carson,

I'm hoping we can confer tomorrow at 1:00, 2:00, 4:00, or 5:00 pm Eastern. Please let us know this evening what works. Thanks.

Mark Lezama

Partner

mark.lezama@knobbe.com

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Irvine, CA 92614

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From: Mark Lezama <Mark.Lezama@knobbe.com>

Sent: Wednesday, July 12, 2023 8:57 AM

To: Carson Olsheski <COlsheski@desmaraisllp.com>

Cc: bpalapura@potteranderson.com; dmoore@potteranderson.com; Greenfield, Leon <Leon.Greenfield@wilmerhale.com>; Vote, Dominic <Dominic.Vote@wilmerhale.com>; Ford, Mark <Mark.Ford@wilmerhale.com>; Milici, Jennifer <Jennifer.Milici@wilmerhale.com>; Apple Masimo Service <AppleMasimoService@desmaraisllp.com>; Knobbe.MasimoDE <Knobbe.MasimoDE@knobbe.com>; Jack Phillips <JCP@pmhdelaw.com>; Megan C. Haney <mch@pmhdelaw.com>; Elena K. Wentz <EKW@pmhdelaw.com>

Subject: Re: Apple v. Masimo (Delaware) - Discovery Responses and Privilege

Carson,

When you have a moment, please let us know which times I mentioned work for you so that we can free up some time slots.

Thanks,

Mark Lezama

Partner

mark.lezama@knobbe.com

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Sent from my mobile device

On Jul 11, 2023, at 3:52 PM, Mark Lezama <Mark.Lezama@knobbe.com> wrote:

Carson,

Thanks for your letter. I'm attaching a letter concerning the requests for production. The parties disagree on whether Apple must commit now to whether it will maintain or waive privilege, so let's please confer on at least this issue. We're available tomorrow at 1:00 (for 20 minutes), 3:00, or 5:00 pm Eastern and Thursday at 1:00, 2:00, 4:00, or 5:00 pm Eastern.

Mark Lezama

Partner

mark.lezama@knobbe.com

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From: Carson Olsheski <COlsheski@desmaraisllp.com>

Sent: Monday, July 10, 2023 5:40 PM

To: Mark Lezama <Mark.Lezama@knobbe.com>

Cc: bpalapura@potteranderson.com; dmoore@potteranderson.com; Greenfield, Leon <Leon.Greenfield@wilmerhale.com>; Vote, Dominic

<Dominic.Vote@wilmerhale.com>; Ford, Mark <Mark.Ford@wilmerhale.com>; Milici,

Jennifer <Jennifer.Milici@wilmerhale.com>; Apple Masimo Service

<AppleMasimoService@desmaraisllp.com>; Knobbe.MasimoDE

<Knobbe.MasimoDE@knobbe.com>; Jack Phillips <JCP@PMHDELaw.com>; Megan C.

Haney <mch@PMHDELaw.com>; Elena K. Wentz <EKW@PMHDELaw.com>

Subject: RE: Apple v. Masimo (Delaware) - Discovery Responses and Privilege

Mark,

Please see the attached correspondence in response to your June 30 letter. To the extent conferral is required, could you please propose a few times on Wednesday or Thursday of this week?

Thanks,

Carson Olsheski
Desmarais LLP
230 Park Avenue
New York, NY 10169
212-808-2911 | direct

From: Mark Lezama <Mark.Lezama@knobbe.com>
Sent: Monday, July 10, 2023 6:14 PM
To: Carson Olsheski <COlsheski@desmaraisllp.com>
Cc: bpalapura@potteranderson.com; dmoore@potteranderson.com; Greenfield, Leon <Leon.Greenfield@wilmerhale.com>; Vote, Dominic <Dominic.Vote@wilmerhale.com>; Ford, Mark <Mark.Ford@wilmerhale.com>; Milici, Jennifer <Jennifer.Milici@wilmerhale.com>; Apple Masimo Service <AppleMasimoService@desmaraisllp.com>; Knobbe.MasimoDE <Knobbe.MasimoDE@knobbe.com>; Jack Phillips <JCP@PMHDELaw.com>; Megan C. Haney <mch@PMHDELaw.com>; Elena K. Wentz <EKW@PMHDELaw.com>
Subject: [Ext] RE: Apple v. Masimo (Delaware) - Discovery Responses and Privilege

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Carson,

We'd like to submit a motion for teleconference tomorrow on the issues raised in my June 30 letter. Please let us know when tomorrow morning you're available to confer.

Mark Lezama
Partner
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Irvine, CA 92614
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From: Mark Lezama <Mark.Lezama@knobbe.com>

Sent: Friday, July 7, 2023 12:34 PM

To: Carson Olsheski <COlsheski@desmaraisllp.com>

Cc: bpalapura@potteranderson.com; dmoore@potteranderson.com; Greenfield, Leon <Leon.Greenfield@wilmerhale.com>; Vote, Dominic <Dominic.Vote@wilmerhale.com>; Ford, Mark <Mark.Ford@wilmerhale.com>; Milici, Jennifer <Jennifer.Milici@wilmerhale.com>; Apple Masimo Service <AppleMasimoService@desmaraisllp.com>; Knobbe.MasimoDE <Knobbe.MasimoDE@knobbe.com>; Jack Phillips <JCP@PMHDELaw.com>; Megan C. Haney <mch@PMHDELaw.com>; Elena K. Wentz <EKW@PMHDELaw.com>

Subject: RE: Apple v. Masimo (Delaware) - Discovery Responses and Privilege

Carson,

Thanks for your email. I don't think we need to see your response in writing before we confer, and I don't see a reason to delay the call any further. The parties each raised other discovery issues on June 30 and conferred earlier this week on those, so our request for a call is reasonable. We'd appreciate hearing from you today on when Monday and Tuesday your team is available to confer.

Best regards,

Mark Lezama

Partner

mark.lezama@knobbe.com

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From: Carson Olsheski <COlsheski@desmaraisllp.com>

Sent: Friday, July 7, 2023 11:33 AM

To: Mark Lezama <Mark.Lezama@knobbe.com>

Cc: bpalapura@potteranderson.com; dmoore@potteranderson.com; Greenfield, Leon <Leon.Greenfield@wilmerhale.com>; Vote, Dominic <Dominic.Vote@wilmerhale.com>; Ford, Mark <Mark.Ford@wilmerhale.com>; Milici, Jennifer <Jennifer.Milici@wilmerhale.com>; Apple Masimo Service <AppleMasimoService@desmaraisllp.com>; Knobbe.MasimoDE <Knobbe.MasimoDE@knobbe.com>; Jack Phillips <JCP@PMHDELaw.com>; Megan C. Haney <mch@PMHDELaw.com>; Elena K. Wentz <EKW@PMHDELaw.com>

Subject: RE: Apple v. Masimo (Delaware) - Discovery Responses and Privilege

Mark,

As I indicated on Monday, we are preparing a response to your letter—sent 9:00pm Friday evening before a holiday weekend—and will include with that response our availability to meet and confer.

Best,

Carson Olsheski
Desmarais LLP
230 Park Avenue
New York, NY 10169
212-808-2911 | direct

From: Mark Lezama <Mark.Lezama@knobbe.com>
Sent: Friday, July 7, 2023 1:31 PM
To: Carson Olsheski <COlsheski@desmaraisllp.com>
Cc: bpalapura@potteranderson.com; dmoore@potteranderson.com; Greenfield, Leon <Leon.Greenfield@wilmerhale.com>; Vote, Dominic <Dominic.Vote@wilmerhale.com>; Ford, Mark <Mark.Ford@wilmerhale.com>; Milici, Jennifer <Jennifer.Milici@wilmerhale.com>; Apple Masimo Service <AppleMasimoService@desmaraisllp.com>; Knobbe.MasimoDE <Knobbe.MasimoDE@knobbe.com>; Jack Phillips <JCP@PMHDELaw.com>; Megan C. Haney <mch@PMHDELaw.com>; Elena K. Wentz <EKW@PMHDELaw.com>
Subject: [Ext] RE: Apple v. Masimo (Delaware) - Discovery Responses and Privilege

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Counsel,

Please provide some times you are available Monday and Tuesday to confer on my June 30 letter.

Mark Lezama
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From: Mark Lezama

Sent: Thursday, July 6, 2023 9:45 AM

To: Carson Olsheski <COlsheski@desmaraisllp.com>

Cc: bpalapura@potteranderson.com; dmoore@potteranderson.com; Greenfield, Leon <Leon.Greenfield@wilmerhale.com>; Vote, Dominic <Dominic.Vote@wilmerhale.com>; Ford, Mark <Mark.Ford@wilmerhale.com>; Milici, Jennifer <Jennifer.Milici@wilmerhale.com>; Apple Masimo Service <AppleMasimoService@desmaraisllp.com>; Knobbe.MasimoDE <Knobbe.MasimoDE@knobbe.com>; Jack Phillips <JCP@PMHDELaw.com>; Megan C. Haney <mch@PMHDELaw.com>; Elena K. Wentz <EKW@PMHDELaw.com>

Subject: RE: Apple v. Masimo (Delaware) - Discovery Responses and Privilege

Carson,

Is your team available tomorrow to confer on the issues raised in my June 30 letter?

Mark Lezama

Partner

mark.lezama@knobbe.com

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From: Carson Olsheski <COlsheski@desmaraisllp.com>

Sent: Monday, July 3, 2023 2:55 PM

To: Mark Lezama <Mark.Lezama@knobbe.com>

Cc: bpalapura@potteranderson.com; dmoore@potteranderson.com; Greenfield, Leon <Leon.Greenfield@wilmerhale.com>; Vote, Dominic <Dominic.Vote@wilmerhale.com>; Ford, Mark <Mark.Ford@wilmerhale.com>; Milici, Jennifer <Jennifer.Milici@wilmerhale.com>; Apple Masimo Service <AppleMasimoService@desmaraisllp.com>; Knobbe.MasimoDE <Knobbe.MasimoDE@knobbe.com>; Jack Phillips <JCP@PMHDELaw.com>; Megan C. Haney <mch@PMHDELaw.com>; Elena K. Wentz <EKW@PMHDELaw.com>

Subject: RE: Apple v. Masimo (Delaware) - Discovery Responses and Privilege

Hello Mark,

We received your letter at 9:00pm on the Friday of the July 4th Holiday. Of course we will need some time to review the substance of your letter, and will respond as soon as practical. Our further response will set forth our availability for conferral, if necessary.

Best,

Carson Olsheski
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212-808-2911 | direct

From: Mark Lezama <Mark.Lezama@knobbe.com>
Sent: Monday, July 3, 2023 3:01 PM
To: Carson Olsheski <COlsheski@desmaraisllp.com>
Cc: bpalapura@potteranderson.com; dmoore@potteranderson.com; Greenfield, Leon <Leon.Greenfield@wilmerhale.com>; Vote, Dominic <Dominic.Vote@wilmerhale.com>; Ford, Mark <Mark.Ford@wilmerhale.com>; Milici, Jennifer <Jennifer.Milici@wilmerhale.com>; Apple Masimo Service <AppleMasimoService@desmaraisllp.com>; Knobbe.MasimoDE <Knobbe.MasimoDE@knobbe.com>; Jack Phillips <JCP@PMHDELaw.com>; Megan C. Haney <mch@PMHDELaw.com>; Elena K. Wentz <EKW@PMHDELaw.com>
Subject: [Ext] Apple v. Masimo (Delaware) - Discovery Responses and Privilege

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Carson / Counsel,

I'm just following up on the email below and the attached letter. Given the holiday tomorrow, please let us know this afternoon whether 10 am Pacific Wednesday works for you for a call. If not, please suggest some other times this week.

Mark Lezama
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From: Mark Lezama <Mark.Lezama@knobbe.com>

Sent: Friday, June 30, 2023 5:53 PM

To: Carson Olsheski <COlsheski@desmaraisllp.com>

Cc: bpalapura@potteranderson.com; dmoore@potteranderson.com; Greenfield, Leon <Leon.Greenfield@wilmerhale.com>; Vote, Dominic <Dominic.Vote@wilmerhale.com>; Ford, Mark <Mark.Ford@wilmerhale.com>; Milici, Jennifer <Jennifer.Milici@wilmerhale.com>; Apple Masimo Service <AppleMasimoService@desmaraisllp.com>; Knobbe.MasimoDE <Knobbe.MasimoDE@knobbe.com>; Jack Phillips <JCP@PMHDELaw.com>; Megan C. Haney <mch@PMHDELaw.com>; Elena K. Wentz <EKW@PMHDELaw.com>

Subject: Apple v. Masimo - Discovery Responses and Privilege

Carson,

I'm attaching a letter concerning Apple's RFP responses and privilege assertions. Please let us know whether your team is available to discuss next Wednesday at 10 am Pacific.

In the meantime, have a great weekend.

Mark Lezama

Partner

mark.lezama@knobbe.com

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<2023-07-11 Letter.pdf>

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